

## ARKANSAS COURT OF APPEALS

DIVISION I  
No. CA 10-843

P.P.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** March 30, 2011

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[NO. JV-2010-14]

HONORABLE RHONDA K. WOOD,  
JUDGE

AFFIRMED

**ROBIN F. WYNNE, Judge**

Appellant P.P. appeals from a delinquency adjudication based on the offense of theft of property, arguing that the finding was not supported by sufficient evidence. Because P.P. failed to preserve this argument for review, we affirm.

In a hearing held on April 28, 2010, the State presented evidence that P.P., a fourteen-year-old girl, had stolen a package of razors from a Price Cutter grocery store. Jason Eldridge, the store's director, testified that he observed P.P. take the package of razors off the shelf, tear it open, and place the razors in her pocket. Mr. Eldridge approached P.P. in the card section of the store and asked her what she had in her pocket, to which she replied, "I don't have anything." However, when Mr. Eldridge asked P.P. to give him the merchandise, she gave him the razors and admitted to taking them. P.P. had not left the store before Mr. Eldridge confronted her. Shortly thereafter, P.P.'s mother came into the store and, upon learning what

had happened, insisted on paying for the razors.

After Mr. Eldridge's testimony, the State rested. P.P.'s attorney moved to dismiss, arguing that the State had not proved that P.P. converted the merchandise because she had not left the store with it and because the store had allowed her mother to pay for it. The trial court denied the motion.

P.P.'s mother, Rose Lawrence, then testified that she sent P.P. into the store to purchase razors. Ms. Lawrence stated that she had given P.P. an old razor and instructed her to buy the same kind. P.P. also testified that she went into the store carrying a used razor. She stated that the package of razors she was accused of stealing was already open, and she was only checking to make sure they were the same kind as the used one she had brought with her.

After P.P.'s testimony, the defense rested, and the attorneys gave their closing arguments. At no time did P.P.'s attorney renew his previous motion to dismiss. The trial court found that P.P. had exercised unauthorized control over the merchandise, thereby violating Arkansas Code Annotated section 5-36-103, and sentenced P.P. to nine months' probation. P.P. filed a timely notice of appeal on May 14, 2010.

P.P.'s sole point on appeal is that the State presented insufficient evidence to sustain a finding of delinquency based on theft of property. However, we cannot reach the merits of that argument because P.P. failed to preserve it for our review. Arkansas Rule of Criminal Procedure 33.1 (2010) states that, in order to preserve a challenge to the sufficiency of the

evidence, a defendant in a nonjury trial must move for dismissal at the close of all evidence. If the defendant makes such a motion at the conclusion of the State's case, the motion must be renewed at the close of all evidence. Ark. R. Crim. P. 33.1(b). The failure of a defendant to challenge the sufficiency of the evidence at the times required by Rule 33.1 will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. Ark. R. Crim. P. 33.1(c) (2010). The rules of criminal procedure apply to juvenile-delinquency proceedings. Ark. Code Ann. § 9-27-325(f) (Repl. 2009); *D.B. v. State*, 2010 Ark. App. 433, at 2; *Trammell v. State*, 70 Ark. App. 210, 213, 16 S.W.3d 564, 566 (2000). Although P.P. moved to dismiss at the close of the State's case, she did not renew her motion at the close of all evidence. Therefore, the sufficiency argument was not preserved, and we must affirm.

Affirmed.

GLADWIN and GLOVER, JJ., agree.